

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CLEMENS DEVELOPMENT COMPANY, INC.	:	CASE NO. C-3-06-0188 (Magistrate Judge Michael Merz)
	:	
Plaintiff,	:	
	:	<u>AMENDMENT NO. 1 TO</u>
vs.	:	<u>CONSENT DECREE</u>
	:	<u>RENDERING FINAL JUDGMENT</u>
BEAVERCREEK TOWNSHIP TRUSTEES, et al.	:	
	:	
Defendants.	:	

On May 30, 2008, this Court approved a Consent Decree Rendering Final Judgment (Doc. 39) which provided, among other things, for the approval of a specific Site Plan for a Planned Unit Development (PUD) identified as "Arlington Place" and "The Colony."

WHEREAS, subsequent to the approval of that specific Site Plan, the Greene County, Ohio, Engineer required an additional storm water detention pond; and,

WHEREAS, in order to comply with the requirements of the Greene County, Ohio, Engineer, it was necessary to amend the specific Site Plan previously approved by this Court so as to create a detention pond on Lot 64 in Section 4 of that portion of the PUD known as "Arlington Place"; and,

WHEREAS, although this amendment will change the dimension of certain lots in Section 4 of "Arlington Place", it will not change the gross density of the PUD as established by the Consent Decree of May 30, 2008, nor create or eliminate the number of lots set forth in the specific Site Plan as previously approved by this Court; and,

WHEREAS, both parties to the Consent Decree are in agreement that the Site Plan as originally approved by this Court, needs to be amended so as to comply with the requirements of the Greene County, Ohio, storm drainage plan; and,

WHEREAS, the Board of Trustees of Beaver Creek Township passed Resolution No. 2009-327 on the August 10, 2009, approving modification of the Consent Decree as previously approved by this Court;

NOW, THEREFORE, IT IS THE ORDER OF THIS COURT that:

1. The Site Plan previously approved by this Court by the terms of the Consent Decree issued on May 30, 2008, is hereby amended to provide for the creation of a storm detention pond on Lot 64 in Section 4 of "Arlington Place" as shown on the attached Site Plan revised as of March 18, 2009;

2. Due to the creation of the detention pond on Lot 64, the remaining lots in Section 4 of "Arlington Place" shall be modified to conform to the dimensions set forth in the specific Site Plan revised March 18, 2009 attached hereto;

3. The deed for Lot 64 in Section 4 of Arlington Place shall contain the following statement:

The 88 ft. storm water detention and drainage easement on Lot 64 is reserved for storm water detention and drainage purposes. Any placement of structures or materials and/or any regrading of the storm water detention and drainage easement area requires review and approval of the Beaver Creek Township Zoning Administrator; the Greene County Engineer and the Greene County Flood Plain Administrator. The operation and maintenance of the detention pond and area inside of the 88 ft. easement is the responsibility of the owner of record of Lot 64. The owner of record of Lot 64 shall keep all storm water detention inlets and outlets free from debris. There should be no planting of trees or shrubbery on the detention pond embankment.

Clemens Development Company, Inc., shall provide Beaver Creek Township with a copy of the deed to Lot 64 evidencing the inclusion of the above language in said deed at time of sale or transfer of Lot 64.

4. Minor changes as required by the Greene County, Ohio, Regional Planning Commission may be made to the specific Site Plan as to ensure compliance with the Greene County, Ohio, subdivision regulations or standard engineering practices.

5. Other than to allow for the modification of the Site Plan as ordered above, the parties shall comply with the terms of this Court's Consent Decree as issued on May 30, 2008.

IT IS SO ORDERED.

s/ **Michael R. Merz**
United States Magistrate Judge

/s/ Michael W. Sandner

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NOTICE RE: ATTACHMENT TO AMENDMENT NO. 1 TO CONSENT DECREE
RENDERING FINAL JUDGMENT

The specific Site Plan referenced as being attached to the *Amendment No. 1 to Consent Decree Rendering Final Judgment* has been filed with the Court via conventional filing. Parties may access this filing at the Clerk's Office for the United States District Court, Southern District of Ohio, at Dayton.